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October 6, 2020

VIA ECF

Hon. A. Kathleen Tomlinson
United States Magistrate Judge
United States District Court
Eastern District of New York
100 Federal Plaza, P.O. Box 9014
Central Islip, NY 11722

Re: *Carlos Amaya v. Ernesto Decena, et al.*
Civil Case No.: 19-cv-07194 (DRH) (AKT)

Dear Judge Tomlinson:

As counsel for Defendants in the above matter, we write together with Plaintiff's counsel to submit the parties' signed consent to Your Honor's jurisdiction for purposes of approving the parties' FLSA Settlement Agreement ("Agreement"). *See* Exhibit A. For the reasons set forth in the parties' application, the parties request that the Court approve the Agreement. Dkt. 30.

Further, the parties wanted to bring to Your Honor's attention that while the parties agree that the settlement amount is \$7,999.98 (as shown in Exhibit B of the Settlement Agreement), there is an internal inconsistency within paragraph 4 of the Agreement. Enclosed is a conformed, corrected copy of page 3 of the Agreement, countersigned by counsel with the consent of their respective clients. *See* Exhibit B. The parties request that the approval reflect this change, and remain willing to provide any other supplemental information that the Court may require in order to approve the Agreement and close the case.

Respectfully submitted,

LAW OFFICES OF JAMES F. SULLIVAN, P.C.
ATTORNEYS FOR PLAINTIFF
52 Duane Street, 7th Fl.
New York, New York 10007
Tel.: (212) 374-0009

By: s/ James F. Sullivan
JAMES F. SULLIVAN, ESQ.

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By: s/ Noel P. Tripp
NOEL P. TRIPP, ESQ.

EXHIBIT A

AO 85 (Rev. 02/17) Notice, Consent, and Reference of a Civil Action to a Magistrate Judge

UNITED STATES DISTRICT COURT

for the
Eastern District of New York

Carlos Amaya

Plaintiff

v.

Ernie's Auto Detailing Inc., et al.

Defendant

Civil Action No. 19-cv-07194 (DRH) (AKT)

NOTICE, CONSENT, AND REFERENCE OF A CIVIL ACTION TO A MAGISTRATE JUDGE

Notice of a magistrate judge's availability. A United States magistrate judge of this court is available to conduct all proceedings in this civil action (including a jury or nonjury trial) and to order the entry of a final judgment. The judgment may then be appealed directly to the United States court of appeals like any other judgment of this court. A magistrate judge may exercise this authority only if all parties voluntarily consent.

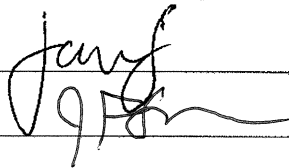
You may consent to have your case referred to a magistrate judge, or you may withhold your consent without adverse substantive consequences. The name of any party withholding consent will not be revealed to any judge who may otherwise be involved with your case.

Consent to a magistrate judge's authority. The following parties consent to have a United States magistrate judge conduct all proceedings in this case including trial, the entry of final judgment, and all post-trial proceedings.

Printed names of parties and attorneys
Ernie's Auto Detailing Inc. and Ernesto Decena

*Signatures of parties or attorneys**Dates*

Carlos Amaya



 9/28/2020
 10/5/2020

Reference Order

IT IS ORDERED: This case is referred to a United States magistrate judge to conduct all proceedings and order the entry of a final judgment in accordance with 28 U.S.C. § 636(c) and Fed. R. Civ. P. 73.

Date: _____

*District Judge's signature*_____
Printed name and title

Note: Return this form to the clerk of court only if you are consenting to the exercise of jurisdiction by a United States magistrate judge. Do not return this form to a judge.

EXHIBIT B

3. **Release of All FLSA Claims by Plaintiff.** Plaintiff knowingly and voluntarily releases and forever discharges Defendants of and from any and all FLSA Claims of any kind or nature, whether known or unknown, arising up to and as of the date of the execution of this Agreement, which may exist against Defendants, including, but not limited to, the FLSA Claims contained in the Lawsuit and any other FLSA claim whatsoever; and any claim for costs, fees, or other expenses, including, but not limited to, a claim for attorneys' fees or costs.
4. **Consideration.** In exchange for the promises made herein by Plaintiff, Ernie's Auto agrees to pay the total sum of ~~Eight Thousand Dollars and Zero Cents (\$12,000.00)~~ ("the Settlement Sum") in two (2) installments in accordance with the schedule attached hereto as Exhibit B, as follows: *Seven thousand nine hundred and ninety-nine Dollars and ninety-eight cents (\$7,999.98)* JF
JS
- a. Within seven (7) business days after court approval, Ernie's Auto will send the first installment payment as reflected in Exhibit B below. On or before November 26, 2020 (provided the Court has approved this agreement and dismissed the above-captioned action), Ernie's Auto will send the second installment payment as reflected in Exhibit B below.
 - b. If court approval has not occurred, the first settlement payment will be sent to Plaintiff's counsel to hold "in escrow" pending settlement approval. In the event approval is not granted, counsel for Plaintiff shall return all such payments to counsel for Defendants;
 - c. Payments to Plaintiff shall be reported 25% as wages on Form W-2 and 75% as non-wage damages reported on Form 1099, with backup withholding as appropriate. Payments to Plaintiff's counsel as attorneys' fees shall be reported on Forms 1099 issued to Plaintiff's counsel, James F. Sullivan, Esq. of the Law Office of James Sullivan, P.C.;
 - d. The Parties agree that, for purposes of any forms that may be requested by Defendants in connection with payment, Plaintiff may, where applicable, indicate "applied for" in any portion that requests a taxpayer identification number;
 - e. The settlement payments shall be sent to Plaintiff's counsel who shall be responsible for distribution of the payments to Plaintiff.
5. **Non-Admission of Wrongdoing.** Plaintiff and Defendants agree that neither this Agreement nor the furnishing of the consideration provided for herein shall be deemed or construed at any time or for any purpose as an admission of any liability or unlawful conduct of any kind by Defendants.